IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 27246 of 1999(R)

PETITIONER:

V.V.DEVIS, EX.NO.2574369 SEPOY
VADAKALAM HOUSE, ELENJIPRA P.O.,
TRICHUR 80 721.

BY ADV. SRI.K.L.JOSEPH

RESPONDENTS:
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1. **THE CONTROLLER OF DEFENCE ACCOUNTS (PENSION), ALLAHABAD I.P.**

2. **RECORD OFFICER, FOR OIC RECORDS, MADRAS REGIMENT ABHILEKH, KARYALAYA POST BAG NO.1, WILLINGTON (NILGRIRIS) 643 231.**

3. **THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF DEFENCE, GOVERNMENT OF INDIA, NEW DELHI.**

BY ADV. SRI.V.V.SURESH, ADDL.CGSC
SRI.C.K.SASI, CGC
SRI.THOMASMATHEW NELLIMOOTTIL,SR.PANEL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.27246/1999

ORDER ON CMP. NO.46161/1999 IN OP. NO.27246/1999

DISMISSED

10.07.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE INTIMATION DT. 23.6.80 BEARING NO.2574369/DP/5/PG-3.

EXT.P2:- COPY OF THE COMMUNICATION DT. 26.9.80 BEARING NO. 2574369/DP/10/PG-3.

EXT.P3:- COPY OF THE APPEAL DT. 21.7.1981.

EXT.P4:- COPY OF THE REMINDER DT. 19.9.81 BY THE PETITIONER.

EXT.P5:- COPY OF THE REMINDER DT. 15.1.82 BY THE PETITIONER.

EXT.P6:- COPY OF THE ORDER DT. 8.8.82 BEARING NO.7(976)/81/D(PN-A).

EXT.P7:- COPY OF THE APPEAL DT. 15.9.82 BY THE PETITIONER.

EXT.P8:- COPY OF THE ORDER DT.19.1.84 BEARING NO.6(54)/ 83/PEN-APP. CTTEE.

EXT.P9:- COPY OF THE ORDER DT. 10.11.88 BEARING NO.5 (36)88/D(PEN.A) 11283/88/D (PEN.A/C).

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE INJURY REPORT OF THE ACCIDENTAL AND SELF INFLICTED INJURIES OFFICERS) DT.7.1.1977 ALONG WITH THE STATEMENT OF THE PETITIONER.

EXT.R1(b):- COPY OF THE PROCEEDINGS OF THE MEDICAL BOARD AND OPINION OF THE MEDICAL BOARD DT. 22.4.77.

EXT.R1(c):- COPY OF THE SUBSEQUENT TO MEDICAL BOARD PROCEEDINGS DT. 26.11.77.

EXT.R1(d):- COPY OF THE INVALIDING MEDICAL BOARD PROCEEDINGS.

/TRUE COPY/

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T.R. Ramachandran Nair, J.

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O.P.NO.27246 of 1999-R

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Dated this the 10th day of July, 2007

JUDGMENT

The petitioner is aggrieved by the refusal of the respondents to sanction disability pension from the date of discharge from Army service. The petitioner was enrolled in the Army on 19.7.1975 as a Sepoy. He was discharged on medical grounds on 1.1.1980, after the qualifying service of four years and 166 days. The ground of discharge was on medical ground of generalised epilepsy suffered by the petitioner.

2. According to the petitioner, the illness/disability is attributable to military service. While he was working in the 28 Madras Battalion, on 17.8.1976, while practicing football the petitioner met with an accident in which he sustained head injuries as well as an injury to the small finger of right arm. In 1977 the unit was moved to Golconda, Hyderabad. There he experienced giddiness and was admitted in the Military Hospital, Golconda. Thereafter, he was taken to the Military Hospital, Pune. This is the history of the discharge.

3. The petitioner was sanctioned only an amount of Rs.1179/- as invalid gratuity. Even though he requested for sanction of disability

pension, that was rejected by Ext.P1 stating that the disability is not attributable to military service. This order was challenged by him by filing an appeal before the Secretary, Ministry of Defence (Ext.P3). Finally, the appeal was rejected by Ext.P6. Again he was allowed an opportunity to file an appeal before the Appellate Committee of the Defence Ministry. Thus, he filed Ext.P7 appeal which was rejected by Exts.P8 and P9.

4. The respondents have filed a counter affidavit and another additional counter affidavit supporting the orders passed. In the counter affidavits, it has been averred that going by para 173 of the Pension Regulations, a disability pension can be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over. It is submitted that the case of the petitioner that his disability is due to the heady injury he sustained on 17.8.1976 is not correct.

5. Heard Shri K.L. Joseph, learned counsel for the petitioner and Shri Thomas Mathew Nellimoottil, learned Senior Standing Counsel for the respondents.

6. Learned counsel for the petitioner submitted that the medical records produced along with the additional counter affidavit will show that he had suffered injury while playing football in August 1976, the disability

was noticed during December 1976 and hence it can only be attributed to the head injury sustained by him in August 1976. It is therefore submitted that as he had no previous record of any such disability at any time prior to December 1976, the only conclusion that can be drawn is that it is attributable only to the military service.

7. Learned Senior Standing Counsel appearing for the respondents submitted that Ext.R1(a) will only show that while the petitoiner was playing football, he slipped and fell down on the ground and the injury was only to the right hand. It is also submitted that Exts.R1(b) to R1(d) will not establish that the disability has been caused due to any head injury. It was also submitted that the percentage of disability is less than 20% and therefore his case will not be covered by Regulation 173 also.

8. A reference to the medical records Exts.R1(a) to R1(d) will not justify the contention raised by the petitioner that the disability is attributable to military service. The Medical Board has carefully examined him and has formed their opinion that the disability is not attributable to military service. The Invaliding Medical Board has recorded in Ext.R1(d) that he was suffering from generalised epilepsy and the percentage of disability was 15 - 19%. It may also be mentioned herein that going by the dictum laid down by the Hon'ble Supreme Court in the decision reported in

2005 (4) KLT 703 (SC) the opinion of the Medical Board has to be given due weightage. Even though learned counsel for the petitioner argued for the position that there is real proximity between the injury sustained by him while playing football and the recurrence of the disability, in the absence of any medical evidence to show that the disability is attributable to the injury sustained on 17.8.1976, this court will not be justified in drawing such a presumption. All aspects have been considered by the authorities below in the right perspective.

Therefore, the original petition fails and the same is dismissed. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.27246 of 1999-R

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JUDGMENT

10th day of July, 2007